譾論古代財產刑處罰方式的演變: 以戰國後期至漢初為中心*

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緒 言

財產刑在古代中國主要表現為贖和罰兩類,贖是針對所判本刑的減免,罰則屬本刑,出現晚於贖。¹由於記載簡質,先秦時期情況多不分明,洎睡虎地秦簡、張家山漢簡等出土史料相繼公布,學界始能對秦漢兩代作系統了解。自上世紀七十年代後期迄今,學界集中從法制史角度出發,對秦漢財產刑種類、在刑罰序列中的位置、秦漢間繼承關係、適用對象、等級、價格、實際處罰形式、刑徒管理等諸多方面深入考論,極大地推進了相關研究的發展。²此外,少數學者在政治史視野下觀察秦漢

^{*} 拙文初稿蒙吉本道雅、王沛兩教授撥冗審閱,復承匿名審稿專家多所批正。改作稿曾於中國政法大學「法律·歷史·文獻」青年學者工作坊宣讀,得到凌文超、徐暢、支強、張忠煒、陳侃理、孫聞博等先生指教。摘要英譯承焦堃學兄惠助。一併奉上誠摯謝意。

¹ 這裏的贖、罰皆指今義。早期文獻中「贖」、「罰」二字與今義有別,如本文「西周至田齊的制度演進」一節言,西周時期的「罰金」實為內刑之贖,又有賠償金的性質;又「秦貲刑的發展與處罰傾向」一節言,秦及漢代B類贖刑具備罰的特徵,而非對本刑的減免;A類贖刑雖符合今義的贖,但在秦及漢初,通過爵位抵罪的可能性大,與財產或無直接關聯。

² 既有研究為數至夥,整體認知也在不斷更新,僅以較前沿的系統研究説,至少有藤田高夫:〈秦漢罰金考〉,載梅原郁(編):《前近代中國の刑罰》(京都:京都大学人文科学研究所,1996年),頁97-121;角谷常子:〈秦漢時代の贖刑〉,載同書,頁67-95;張建國:〈論西漢初期的贖〉,《政法論壇:中國政法大學學報》2002年第5期,頁36-42;張衛星:〈秦簡貲甲形態認識〉,載《秦文化論叢》第11輯(2004年),頁290-304;張金光:《秦制研究》(上海:上海古籍出版社,2004年),頁553-67;冨谷至(著),柴生芳、朱恆曄(譯):《秦漢刑罰制度研究》(桂林:廣西師範大學出版社,2006年),頁32-43、117-34;水間大輔:《秦漢刑法研究》(東京:知泉書館,2007年),頁63-72;任仲爀(著)、樸美玉(譯):〈秦漢律的罰金刑〉,《湖南大學學報》(社會科學版)2008年第3期,頁26-31;陶安あんと:《秦漢刑罰体系の研究》(東京:創文社,2009年),頁146-203;韓樹峰:《漢魏法律〔下轉頁2〕

財產刑繳付物的變化,認為其中反映出秦漢政治從「武」到「文」的轉折,饒有新意。³ 綜合來看,既往論著側重於財產刑罪犯懲戒一面的斷代研究,較少結合經濟背景討論處罰方式中蘊含的國家意志,更未見學者就變化頻繁的先秦至西漢前期一段作整 體關照。

這一現狀也帶來消極影響,比如學界雖認同戰國後期以降,秦貲、贖刑主要通 過金錢繳納或服役抵罪,但幾乎不考慮鑄幣推行狀況與納錢制度出現的關係,也很 少措意兩種處罰方式各自涉及的主體人群,相關理解不免偏頗;又如秦漢之間財產 刑發生了「勞役抵罪收縮」、「由貲甲盾到罰黃金」兩個重要變化。「勞役抵罪收縮」方 面,未獲論證;至於「由貲甲盾到罰黃金」,一些學者試圖從皇帝與臣僚的政治構 造、刑罰制度自身的發展需求、乃至治國理念的轉折等方面加以詮釋,而伴隨新史 料的披露,很多重要推斷被否定,⁴顯示了專從法制、政治史視角解讀的困境。

近年里耶秦簡、嶽麓秦簡漸次公布,為直接觀察制度運作實態提供契機;先秦 貨幣史研究也有較大進展,增添了文字信息以外的另一求證途徑。筆者不揆綿薄, 力圖克服前述弊端,將戰國後期至漢初財產刑處罰方式的演變試加疏通。限於主客 觀條件,其中扣槃捫燭之處必多,企盼讀者方家誨正。

A Preliminary Study of the Transition of the Forms of Financial Penalty in Ancient China: Focusing on the Period from the Late Warring States to the Early Han

(Abstract)

Shi Yang

Financial penalties in ancient China mainly took the forms of ransom and fines. Most previous studies of ancient China's financial penalties proceeded under the viewpoint of legal or political history based on dynastic chronology. However, some important assertions made in these studies have already been refuted by recently excavated materials. Adding to this, the period from pre-Qin time to early Han, during which the forms of financial penalty changed frequently, has not been understood as a whole. This article tries to approach the same topic through economic history, to reveal the state's intention behind the transitions of the forms of financial penalty against the background of metal coins' issuance. The author's conclusion is: since financial penalties were connected to the state's finance for the first time in the Eastern Zhou, their value had been from the first a military one; meanwhile with the prevalence of coinage, the payments came to be made with copper coins. Observing the Qin's financial penalties through the example of fines (zi) shows that they had mainly been applied to people with official duties; then the object was later extended to common people. As, since the time of King Zhaoxiang of Qin, the government put more value on labour provided by prisoners, the form of payment of financial penalty transited rapidly into corvée labour. In the beginning of the Han, taking the fall of the Qin as a lesson, there was no example of demanding labour for a crime, although the law had such a clause: which is to say that financial penalties began to return to the form of monetary payment. The development of type-A ransom was in line with such a return. Generally speaking, the above-mentioned transition was driven by the state's financial demands, while influenced appreciably by the development of a monetary economy.

關鍵詞: 財產刑 金屬鑄幣 貲(罰)、贖 以勞抵罪 黃金

Keywords: financial penalties metal coin fine (zi) / ransom to sentence to labour

for a crime gold